UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.154
10 November 1993

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Eleventh session

SUMMARY RECORD OF THE 154th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 8 November 1993, at 10.30 a.m.

Chairman: Mr. VOYAME

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GE.93-85439 (E)

The meeting was called to order at 10.40 a.m.

OPENING OF THE SESSION

1. The CHAIRMAN declared the session open and welcomed the members of the Committee.

ADOPTION OF THE AGENDA (item 1 of the provisional agenda) (CAT/C/23)

2. The provisional agenda (CAT/C/23) was adopted.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2)

3. The CHAIRMAN announced that he had just received a letter from the Permanent Mission of the Argentine Republic, sent by Mr. Juan Archibaldo Lanús, the Ambassador of Argentina, informing him that Mr. Gil Lavedra, the Committee's Country Rapporteur for Peru and for Paraguay, would not be able to attend the opening meeting of the Committee because he had been appointed representative of the main opposition party in connection with Argentina's constitutional reform process; as negotiations between the opposition and the Government were to be held during the current week, Mr. Gil Lavedra had asked Mr. Lanús to apologize for the fact that he could not be present. Since Mr. Gil Lavedra was the Rapporteur for Peru and for Paraguay, his absence raised problems for the reports of those two countries.

4. With regard to the timetable for the consideration of country reports, he said that the initial report of Nepal and the periodic report of Switzerland, which had both been received too late to be considered at the current session, would be taken up at the next session. After calling for volunteers to act as country rapporteurs and alternate country rapporteurs, he said that, for Nepal, Mr. Burns would act as Country Rapporteur and Mr. El Ibrashi as Alternate Country Rapporteur; and, for Switzerland, Mr. Ben Ammar as Country Rapporteur and Mr. Lorenzo as Alternate Country Rapporteur.

5. As the Committee was meeting in its current composition for the last time, it might be useful for it to give the Secretariat and future country rapporteurs some indication of how to draft the annual report, which in the past had been too lengthy.

6. Concerning the work of other human rights bodies that might be of interest to the Committee against Torture, he noted that he himself had already reported on the work of the Committee on the Elimination of Discrimination against Women and Mr. Sorensen on the Committee on the Rights of the Child. The members of the Committee investigating other human rights bodies might wish to report on their findings.

7. In keeping with past practice, the Committee would be holding a press conference at the end of its session, 19 November 1993, at 11 a.m. on Friday.

8. Mr. DIPANDA MOUELLE asked whether Mr. Gil Lavedra would be present later in the session, or not at all.

9. The CHAIRMAN said that that was not clear from the letter from the Ambassador of Argentina. He hoped that Mr. Gil Lavedra would be present for the second week of the Committee's work.

10. The CHAIRMAN said that the Ambassador of Peru had informed him that a new Constitution had just been adopted in his country and included many new legal guarantees. The initial report of Peru (CAT/C/7/Add.15) was therefore no longer relevant. He had offered to give the Committee a general picture of the political situation in Peru, but had said that he would be unable to answer specific questions. Detailed replies could be provided in writing at a later date.

11. That was, however, not a satisfactory solution, since the Committee's practice was to hold direct discussions with delegations on the basis of an oral introduction and the country report. He therefore proposed that the Committee should postpone its consideration of the report of Peru until the twelfth session so that the Government would have time to compile additional, up-to-date information.

12. Mr. BURNS, supported by Mr. DIPANDA MOUELLE and Mr. SORENSEN, said he agreed that the Committee should postpone its consideration of the report of Peru, which should be revised and submitted in time for consideration at the twelfth session.

13. Mr. LORENZO said that Peru should submit a written report and a copy of the new Constitution within 60 days in order to supplement the report already received by the Committee. Ideally, the delegation attending the twelfth session of the Committee against Torture should include representatives of the Government Procurator's Office and the judiciary who were fully conversant with the significance and practice of the implementation of the provisions of the new Constitution.

14. The CHAIRMAN said that the Ambassador of Peru would be invited to attend the Committee's 156th meeting, when he would be informed of the members' views and proposals.

15. The CHAIRMAN said that, at its tenth session, the Committee had received a letter from Mrs. Diaz Palacios inviting members of the Committee to visit Mexico and it had decided to ask the Advisory Services, Technical Assistance and Information Branch of the Centre for Human Rights for advice on how it should proceed. The advice of the Permanent Mission of Mexico had also been sought. Since then, however, there had been no further correspondence from Mrs. Diaz Palacios. The Committee therefore had to decide what action it should take.

16. Mr. BURNS, supported by Mr. EL IBRASHI, said that, if the Government of Mexico wished to follow up the invitation, it should do so through the proper channels, rather than directly through the Committee, and that it was up to the Mexician authorities to make the next move.

17. The CHAIRMAN said he took it that the Committee decided to wait until a further communication had been received form Mrs. Diaz Palacios.

18. It was so decided.

19. Mr. BURNS said that the Ad Hoc International Tribunal which had been set up under Security Council resolution 808 (1993) to prosecute persons responsible for violations of humanitarian law in the former Yugoslavia would have a considerable bearing on the work of the Committee and represent a great step forward in the enforcement by the United Nations of penalties under international criminal law.

20. Originally, the Security Council had set up a Commission of Experts (resolution 780 (1992)) to investigate atrocities in the territory of the former Yugoslavia. The Commission had produced two reports, the first of which (S/25274) had informed the Secretary-General that war crimes were being committed by the warring factions in parts of the former Yugoslavia. The Security Council had then requested the Secretary-General to ask Member States for suggestions on the form an ad hoc tribunal to deal with the conclusions of the Commission of Experts should take. From the suggestions made, it had been clear that States had disagreed only on whether such a tribunal could try persons in absentia. The Secretary-General had recommended that trials should be held only if the accused was present.

21. The Security Council had then decided to set up the Tribunal and the statute prepared by the Office of the Secretary-General had been adopted in full. Although the statute provided for limitations in terms of time and geography, it seemed to be a paradigm for a permanent tribunal. The seat of the Tribunal would be in The Hague and consist of 11 judges, 2 chambers (1 trial chamber and 1 appeal chamber) and the Prosecutor's Office, which would conduct investigations and, if necessary, recommend prosecution. Then, in a preliminary hearing, an initial case would be brought before a single judge who would decide whether a case actually existed and whether a hearing should be held.

22. Whether or not they had accepted the jurisdiction of the Tribunal, all States had to surrender a person in their jurisdiction to the jurisdiction of the Tribunal once an arrest warrant had been issued or, alternatively, try the person themselves. It was of particular relevance to the Committee against Torture that torture was referred to specifically as one of the crimes within the Tribunal's jurisdiction. Cases of alleged torture in the former Yugoslavia could thus be tried by the Tribunal.

23. Every effort should be made to encourage the Member States of the United Nations to provide financial support for the Tribunal. So far, few States had made a contribution of any kind. The Committee should express its recognition of the work of Professor Cherif Bassiouni who had been instrumental in the establishment of the Tribunal. In recognition of his efforts, Professor Cherif Bassiouni had been appointed Chairman of the War Crimes Commission.

24. Mr. SORENSEN said that the importance of the Tribunal could be seen from the fact the President of the European Committee for the Prevention of Torture, Mr. Antonio Cassese, had resigned in order to take up a position as a judge of the Tribunal.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 3)

25. Mr. BRUNI (Secretary of the Committee) drew the Committee's attention to the annotations to agenda item 3 contained in document CAT/C/23 and to documents CAT/C/5, 7, 9, 12, 16/Rev.1 and 21/Rev.1. The last two documents contained lists of the States parties which had been due to submit their initial reports from 1988 to 1993. In addition, the States parties whose second periodic report had been due in 1992 or 1993 were given in documents CAT/C/17 and 20/Rev.1.

26. As to the submission of reports due in 1988, he noted that 27 initial reports had been requested and 25 had already been submitted to the Committee. The States parties whose reports had not yet been received were Uganda and Togo. At its seventh session, the Committee had invited Togo and Uganda to submit one document containing their initial reports and their second periodic reports, which had been due in 1992. In line with the decision taken by the Committee at its eighth session concerning States parties whose reports were more than three years overdue, the Chairman had sent a letter to the Ministers for Foreign Affairs of Uganda and Togo in July 1992 in order to draw their attention to their Governments' reporting obligations. A seventh reminder had been sent by the Secretariat in July 1993, but no reply had yet been received.

27. In 1989, 10 reports had been requested and 9 had been submitted to the Committee. The report of Guyana had not been received despite six reminders, the last of which had been sent in June 1993. As with Togo and Uganda, the Chairman had sent a letter to the Minister for Foreign Affairs of Guyana in July 1992. The Committee had subsequently invited that State party to submit its initial report and its second periodic report in one document.

28. In 1990, 11 initial reports had been requested but those of Brazil and Guinea had yet to be received by the Secretariat. The States parties in question had received three and four reminders, respectively. Their reports were now more than three years overdue. On 28 June 1993, Brazil had sent a note verbale to the Secretariat citing political and legal reasons for the delay in submitting its initial report and had promised to submit one as soon as possible.

29. In 1991, 7 initial reports had been requested, 3 had yet to be received by the Secretariat and reminders had been sent to the States parties concerned, namely, Guatemala, Malta and Somalia. The Committee would recall that Liechtenstein had submitted its report in July 1992, but, after consultations with the Chairman, the Secretariat had asked the Government of Liechtenstein to supplement its report in accordance with the Committee's guidelines. In a note dated 7 October 1993, the Liechtenstein authorities had stated that a full report would be submitted in 1994 and had withdrawn the first version of the report.

30. In 1992, 10 initial reports had been requested, of which 7 had not yet been submitted, namely, those of Croatia, Estonia, Israel, Jordan, Venezuela, Yemen and Yugoslavia. Venezuela had received an initial reminder in September. The initial report of Nepal had been received on 6 October 1993 and would be considered at the Committee's next session.

31. In 1993, 8 initial reports had been due, but none had been received. In all, for the period from June 1988, when the reporting procedure had started, to October 1993, 76 initial reports had been requested, 49 had been submitted, 22 were overdue and 5 were due during the coming months or in 1994. Four initial reports would soon be requested for the second half of 1994.

32. With regard to second periodic reports, 26 had been requested for 1992, 14 were overdue and the States concerned had received initial reminders in July 1993. The report of Switzerland had been received on 28 September 1993 and would be considered at the Committee's next session. Afghanistan had stated in a note verbale dated May 1993 that it was unable to compile a report for 30 June 1993, as the Committee had requested at its ninth session, owing to serious political problems.

33. In addition, 9 periodic reports had been requested for 1993, of which 8 were overdue. In September 1993, Turkey had indicated that its periodic report was being drafted and would be submitted shortly.

34. The Secretariat had transmitted the Committee's conclusions to States whose reports had been considered at the tenth session in April 1993. Supplementary information submitted by the United Kingdom Government concerning dependent United Kingdom territories was contained in document CAT/C/9/Add.14. That information had been requested by the Committee at its ninth session in November 1992.

35. Mr. SORENSEN, referring to the failure by States parties to submit reports, drew attention to paragraph 7 of the Vienna Statement of the International Human Rights Treaty Bodies, according to which treaty bodies should examine the implementation of the Convention in any country which failed to submit either a report or a request for assistance in the preparation of its report from the Advisory Services Programme of the United Nations or any other relevant organization.

36. The CHAIRMAN said that the situation with regard to the submission of reports was generally satisfactory, but effective measures were needed in cases where no report had been submitted. The present system of written reminders in the case of reports which were less than one year overdue should be continued. Where reports were overdue by three years or more, he proposed that the permanent mission of the country concerned should be contacted, since that procedure had proven effective in eliciting a response in previous cases, such as those of Portugal and Peru. In other cases, letters to the Minister for Foreign Affairs were the only means available to the Committee. He would contact the Ambassador of Brazil during the present session and send a letter to the Minister for Foreign Affairs of Guinea requesting reports. Those countries which had persistently failed to submit a report, namely, Togo, Uganda and Guyana would, as previously planned, be named in the Committee's annual report.

37. Mr. BRUNI (Secretary of the Committee) pointed out that, when States parties had failed in the past to submit a report, the Committee had expressed its regret, in its annual report, at the failure of the countries in question to fulfil their obligations.

38. Mr. BURNS said that failure by a State party to the Convention to submit a report was an infringement of the provisions of the Convention and, in his view, that should be stated in the annual report in more forthright terms than had hitherto been the practice in order to put pressure on offending States to fulfil their obligations.

39. Mr. LORENZO said that he agreed with Mr. Burns and stressed that the Committee had a duty to monitor the implementation of the Convention and ensure that the reports required under article 19 were submitted. Efforts to establish personal contact with missions or other diplomatic representations were to be welcomed as being generally more effective than written documents in eliciting a response. If a State party had no diplomatic mission in Switzerland, it might be possible to approach its diplomatic representative elsewhere.

40. Mr. EL IBRASHI said that States parties which failed to comply with article 19 of the Convention might either not submit any report at all or might submit a report while still perpetrating other acts contrary to the provisions of the Convention. A country in the latter category might be subject to greater censure than the first, not because its violations were worse, but because the report exposed it to greater scrutiny. The anomaly needed to be resolved.

41. Mr. SORENSEN said he agreed that such a situation was intolerable. Referring to paragraph 89 of the Vienna Declaration (A/CONF.157/23), he noted that the World Conference on Human Rights had endorsed the proposals made by the chairpersons of the human rights treaty bodies and the idea that the Committee could consider the implementation of the Convention in a country in the absence of a report, even if the Convention contained no provisions to that effect. He proposed that future reminders should contain a specific warning that, within a specified time-limit, the Committee might proceed in that way even without a report.

42. Mr. BEN AMMAR said that he supported the proposal by Mr. Sorensen.

43. Mr. DIPANDA MOUELLE said that he also agreed with the proposal. It might be useful to consider the action taken by other Committees in similar circumstances.

44. Mrs. KLEIN-BIDMON (Representative of the Secretary-General) said that the Committee on the Elimination of Racial Discrimination had decided to examine the status of implementation of the International Convention on the Elimination of Racial Discrimination in countries which were 5 to 10 years overdue in submitting their reports, but only if an initial report had been submitted. In one case, the Committee on Economic, Social and Cultural Rights had decided to examine the implementation of the Covenant in a country which had submitted no initial report. The Committee had written to four countries whose reports were long overdue, requesting a report within the specified time-limit and indicating that it would proceed if no report was submitted.

In all cases but one, the countries concerned had submitted a report or given an assurance that one would be forthcoming. One country which had ignored the request had been sent the Committee's concluding observations. The Committee was continuing its consideration on the basis of other available sources of information and intended to adopt a similar approach in the future. The Human Rights Committee had discussed the issue, but had taken no decision.

45. The CHAIRMAN suggested that, for reports that were up to three years overdue, the Committee should proceed as in the past, sending a note verbale every six months that was worded a little more strongly than the previous one. For reports that were more than three years overdue, he would continue his approaches, which had proved successful.

46. Mrs. KLEIN-BIDMON (Representative of the Secretary-General) suggested that, for countries with no representation in Switzerland, embassies or missions in other European countries might be approached. Another possibility would be to contact permanent missions in New York, perhaps by telephone.

47. The CHAIRMAN said that that too might be done. If no contact could be established, a letter should be sent to the Ministry of Foreign Affairs of the country concerned.

48. With regard to reports overdue for five years or more, the Committee should make its requests slightly stronger, indicating that it would consider the situation in the absence of a report, but inviting the country concerned to send a delegation to the relevant meeting.

49. Mr. LORENZO suggested that UNDP resident representatives might be informed of the problem and asked to contact the Ministry of Foreign Affairs of the country concerned.

50. Mr. SORENSEN said that attention should be drawn to the fact that assistance was available from the advisory services of the Centre for Human Rights.

51. Mr. BRUNI (Secretary of the Committee) said that, although Governments had previously been requested to explain their difficulties to the Committee itself, future reminders might draw their attention to the possibility of using the advisory services.

52. Mrs. KLEIN-BIDMON (Representative of the Secretary-General), replying to a question from the CHAIRMAN, said that the Centre for Human Rights was in contact with UNDP resident representatives and could always ask them to request government officials to reply.

53. The CHAIRMAN said that it would probably be more practical to ask for assistance from UNDP resident representatives than to telephone missions in other cities. It would also be more appropriate for resident representatives to approach the relevant ministries rather than government officials. He suggested that contact should first be made with missions in New York or in Geneva and then with UNDP resident representatives.

The meeting rose at 12.45 p.m.